

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

BALDWIN PARK UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2010090527

BALDWIN PARK UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010080694

DECISION

Administrative Law Judge Adrienne L. Krikorian, Office of Administrative Hearings (OAH), State of California, heard this matter on October 5, 6 and 7, 2010, at Baldwin Park, California. Student was represented by Edwin Egelsee, Attorney at Law. Eli Economou, Attorney at law, and Student's mother (Mother), father (Father),¹ and older sister (Sister) were present each hearing day. A Spanish language interpreter was present on all days of the hearing to assist Mother, including during Mother's testimony.

Meredith Reynolds, Attorney at Law, represented Baldwin Park Unified School District (District). Mary Beltran (Beltran), District Coordinator of Special Education was also present on behalf of District on all hearing days.

On August 19, 2010, District filed a request for due process hearing (complaint) bearing OAH case number 2010080694. On September 14, 2010, Student filed a request for due process hearing bearing OAH case number 2010090527. On September 27, 2010, the two matters were consolidated and Student's case was ordered to be determinative of the 45-day timeline for issuance of this Decision.

¹ Mother and Father are sometimes referred to as Parents.

At the end of the hearing, a continuance was granted until October 29, 2010, to allow parties time to file closing briefs. The parties submitted their closing briefs within the time allowed, and the record was closed on October 29, 2010.

ISSUES²

1. In District's case:

a) Did District appropriately determine at Student's November 18, 2009 individualized education program (IEP) team meeting that Student was no longer eligible as other health impaired (OHI) for special education services under the Individuals with Disabilities Education Act (IDEA)?

b) May District exit Student from special education services based upon its determination at Student's May 21, 2010 IEP team meeting that Student was no longer eligible as OHI for special education services under IDEA?

2. In Student's case, did District deny Student a free and appropriate public education (FAPE) by:

a) determining at Student's November 18, 2009 team meeting that Student was ineligible for special education services as OHI under IDEA?

b) determining at Student's May 21, 2009 IEP team meeting that Student was ineligible for special education services as OHI under IDEA?³

² The issues in the complaints have been restated for purposes of organizing this Decision.

³ At the PHC in the consolidated matter, Student withdrew the following issues raised in his Complaint:

1) Whether District's October 2009 psychoeducational assessment of Student was inappropriate;

2) Whether District denied Student related services for the period November 2009 to on or about February 2010; and

3) Whether District denied Student a FAPE at Student's September 2010 IEP team meeting by failing to find him eligible for special education under the classification of OHI.

FACTUAL FINDINGS

Background and Jurisdiction

1. Student is a thirteen-year-old male in his freshman year at Sierra Vista High School in the District. He lives within the District with Parents. Prior to the IEP team meetings discussed below, he was eligible for special education under the category of speech language impairment and received speech therapy and behavior intervention services.

April 22, 2009 IEP - Initial Eligibility as OHI

2. Student's IEP team held a meeting for Student on April 22, 2009. Those in attendance included six general education teachers including world history teacher Alejandra Gomez (Gomez), District representative Beltran, behavioral aide Alma Ramirez (Ramirez), District school nurse Maria Traudes (Traudes), R.N., District Behavior Consultant Sandra Cossio (Cossio), a Spanish language translator, and Parents.

3. Parents reported to the IEP team their concerns relating to Student's behavior and problems socializing. They also reported that Student loves sports, is good in mathematics, enjoys music and likes to sing.

4. Traudes reported to the IEP team on her April 21, 2010 health assessment of Student. Traudes evaluated Student's vision and hearing, physical appearance, language, dental history, social and behavioral demeanor, and his medical history and medications related to a history of asthma and ADHD. Traudes reviewed a prescription from Stephen Seager M.D. dated April 4, 2009, in which Dr. Seager specified a diagnosis of ADHD. Traudes documented her findings in a two page report, in which she noted that Student was a talkative, very attentive adolescent who was cooperative, friendly and easily distracted. Traudes also noted under recommendations: "Behavior Aide as needed."

5. The IEP team reviewed Student's behaviors, progress and performance, including present levels of performance, and received input from Student's teachers, Cossio and Ramirez. Based upon Traudes' findings of Student's medically documented ADHD, the IEP team found Student eligible as OHI with a medical diagnosis of ADHD, and offered behavior support services including a 1:1 aide on a daily basis for the entire school day. The IEP team agreed to hold an addendum IEP in October 2009, to discuss progress toward Student's attention and focus and to give him time to adjust to his new teachers and programs for the 2009-2010 school year. Parents consented to the IEP and Student received the services of a 1:1 behavior aide.

October 26, 2009 Functional Behavioral Assessment

6. In September, 2009, Student and District entered into a written settlement agreement in an unrelated due process matter, in which District agreed to fund an independent functional behavioral assessment (FBA) and a psychoeducational assessment of Student.

7. Board Certified Education Therapist Kathy Hollimon (Hollimon) conducted an FBA of Student in October 2009. Holliman, who testified at the hearing, has a bachelor of arts and masters of arts in human development. Holliman has teaching credentials in multiple subject regular education, and learning handicapped and severely handicapped special education. She worked as a teacher for special needs children from 1990 to 1997, when she became a program director, therapist, educational consultant, and trainer for Education Spectrum Inc. Her current title is Director of Training and Consultation for Education Spectrum. She has conducted assessments for children with special needs, developed IEP's including goals and accommodations, and has planned class schedules and curriculum to implement IEPs.

8. Holliman's FBA included a review of Student's educational history and school records from 2006, through the April 2009 IEP team meeting, a family and developmental history, educational history, direct observation of Student in class and during meal periods for seven and one half hours over three days, and staff and parent input. Hollimon did not have access to, or review, Student's grades during her FBA. Hollimon observed that Student's educational history, including previous IEPs, included no pervasive indication of concerns with academic ability, but rather demonstrated concerns in the areas of Student's performance. His IEP goals historically contained objectives related to communication, pragmatics and behavior, rather than academics.

9. Based upon staff and Parents' reports indicating that Student had some challenges with social skills, Hollimon acquired additional information from teachers and Parents through social responsive scales. Student's teachers did not rate his social skills to be a primary area of concern. On the social responsiveness scale based upon teacher input, Student's T-Scores in social communication were 60, representing a mild to moderate deficit. His scores in social awareness, social cognition, social motivation and autistic mannerisms ranged from 38 to 53, which were in the average range and indicated no concerning behaviors in those areas. However, Hollimon reported that Student's had some problems with communication which were indicative of a mild social deficit. She noted that Student did not interact well with his peers, did not offer comfort to those who were upset, and had difficulty making friends even when trying his best. Student's Parents rated Student's social and behavior skills as falling within a mild deficit range. They reported that his social communication and autistic mannerisms were of concern, that he had difficulty making friends, got frustrated trying to get his point across in a conversation, did not play cooperatively with other children, was frequently teased, did not have a good sense of boundaries, and dwelled on one issue repetitively without being able to move onto a new issue.

10. Hollimon administered the Motivation Assessment Scales (MAS) to identify motivations that might influence Student's challenging behaviors. The scales completed by District staff supported Hollimon's observational findings, leading to the conclusion that Student engaged in behaviors that were primarily used to seek attention or for escape. Student had deficits in executive skills, including difficulty handling transitions and shifting from one mindset to another; impulsivity; reflexivity such as giving an immediate negative response before any thinking could have occurred; and restricted repertoire including difficulty

generating or reflecting on a range of solutions to a problem. Student also exhibited deficits in social skills by demonstrating difficulty appreciating how behavior affects others or appreciating another person's point of view.

11. Hollimon's impressions of Student included that, while Student demonstrated impulsive behaviors and immature social skills, in isolation these characteristics were no different than many of the behaviors of his peers. Student's attempts at socialization were often pushy and less than effective. He tended to gravitate toward special education students in social situations, which resulted in his social role models not giving him productive feedback to monitor his behavior. In the area of cooperation and compliance, Student's first reaction to a direction he did not like was to argue, although he eventually complied the majority of the time. He had inconsistent respect for adult authority, often challenging staff or telling them they could not tell him what to do.

12. Hollimon concluded that Student must learn self-regulation strategies and behavioral boundaries to avoid inappropriate behaviors that would lead to isolation from his peers and interfere with his ability to learn. Student must begin to internalize basic social rules to help him modulate his responses and sustain the modified behavior. Student's performance was not drastically out of the scope of normal for his age group, but, instead, slightly more pervasive and occurring at an increased frequency, which resulted in Student standing out.

13. Hollimon also concluded that discontinuing special education services for Student was premature based upon her findings. She prepared a written report of her assessment, which included the following recommendations: 1) Student should be placed in a behavioral contract that included clear objectives, delineations of responsibilities between Student, staff and Parents, and a home reflection component; 2) District staff should develop Student's expectations for more social times during lunch, more interactive times during PE, and provide opportunities for Student to continue to build appropriate interaction skills in both small and large groups through direct teaching, high structure opportunities for practice, then low structure opportunities and coaching in the natural environment, with support from a school counselor or other designated instruction and services (DIS) counselor; 3) Student should receive instruction on reducing avoidance behavior, and on collaborative problem solving skills; 4) Student should achieve independence by fading out the 1:1 behavior assistant to increase Student's behavior regulation, utilize problem solving tools and structures to navigate his environment rather than relying on adult assistance; and 5) District staff should consider which interventions would best support behaviors apparently driven by neurological or psychological causes.

November 12, 2009 Psychoeducational Assessment

13. In October, 2009, school psychologist Catherine Whitehouse (Whitehouse) performed a psychoeducational assessment on Student. She reported her findings in a November 12, 2009 report. Whitehouse has a bachelor of arts degree in sociology/social work, a master of social work, and a master of arts in education. She is a licensed clinical social worker, a licensed and credentialed school psychologist, and a social work addictions counselor.

She has worked for District as a school psychologist since 1998. Her job duties included performing psychoeducational evaluations for special education referrals, participating in IEP meetings, providing DIS and crisis counseling, holding district-wide suicide-in-service trainings, managing multiple-site special education staff and assisting on student study teams.

14. Whitehouse assessed Student on October 5, 7, 9, 16, 19, 23 and November 8, 2009. She reviewed Student's previous birth and developmental history, medical findings, educational history, previous testing history, and school records dating back to 2001. She also reviewed a report from private psychologist Ernest J. Rivera, Ph.D. (Dr. Rivera) dated January 2006. Dr. Rivera reported that, at the time of his report, Student had been in treatment for three years, with a diagnosis of severe ADHD, which affected his learning style, attention level and overall emotional status. Dr. Rivera also reported that Student had recently gone through a cycle of severe depression, which caused him high anxiety and impacted his ability to sleep. Whitehouse also reviewed Traudes' April 21, 2009 assessment, noting that Traudes determined that Student was qualified for special education as OHI based upon Student's medical diagnosis of ADHD. Whitehouse's November 12, 2009 report also included information provided by general education teachers Gomez and Elizabeth Lang (Lang), behavioral aide Estelle Leon (Leon), special education teacher Jennifer Batres (Batres), Father, Student, and Hollimon.

15. Whitehouse administered or reported on the following tests and assessments: Cognitive Assessment System (CAS); Naglieri Nonverbal Ability Test (NNAT); Woodcock-Johnson III tests of Achievement (WJ-III); Test of Auditory Processing Skills (TAPS-3); Wide Range Assessment of Visual Motor Abilities (WRAVMA); Developmental Test of Visual Motor Integration – 3rd Revision (DTVMI-3R); Behavior Rating Inventory of Executive Function – Teacher Form (BRIEF); Conners Parent Rating Scale-Revised: Long Version (CPRS-R:L); Conners Teacher Rating Scale-Revised: Long Version (CTRS-R:L); Behavior Assessment System for Children-2nd Edition (BASC-2); and the Children's Category Test (CCT). Whitehouse conducted the assessments in English, in which Student was proficient, using materials and procedures selected with consideration for Student's age, ethnicity, culture, language and experiential background.

16. Student's full scale score on the CAS, which reflected his ability to work with information in a specific linear order, was 101. His full scale score was within average classification and ranked Student in the 53rd percentile.

17. The NNAT measured Student's nonverbal reasoning abilities. Student scored high average range with a standard score of 110 at the 90th percentile and age equivalent of 17-6.

18. The BASC-2 was completed by Student, Father and three of Student's teachers. It assessed Student's behavior and feelings in all areas, including adaptive and social/emotional behavior.

19. Student rated his social/emotional behaviors as acceptable on all validity scales measured. He rated himself at-risk in "Attitude Toward School" – reporting that he disliked

school and sometimes wished that he could be elsewhere. An at-risk rating is an indicator for possible concerns that should be reported to the school psychologist if they arise. The rating did not indicate an immediate area of concern.

20. Father reported Student's behaviors to be within normal limits except in the area of adaptability. He reported that Student took longer to recover from difficult situations than most others of his age. Student's target behaviors included concerns in the area of interrupting others when speaking. Father's ratings on the social/emotional behavior scales found Student's validity scales within acceptable limits. Father's scores in externalizing problems, including hyperactivity, aggression and conduct problems, were relatively more significant than internalizing problems, including anxiety and depression, which Father rated significant. Similarly, Father's ratings showed Student to have some concerns in the areas of adaptability and social skills, and to be clinically significant in anger control and emotional control. Father rated Student at-risk in bullying, developmental social disorders, executive functioning and resiliency.

21. Student's general education teachers Lang and Lopez and behavioral aide Leon found that Student had areas of concerns in adaptability, social skills, and study skills. Gomez's scores on the BASC-2 for social/emotional behaviors were considered acceptable on all scales. Gomez noted no concerns in the area of anxiety, depression or somatization. She rated Student at-risk on anger control, developmental social disorders, emotional control, executive functioning and resiliency. Lang and Leon did not report any concerns or criteria that would constitute evidence of major depressive disorder, ADHD, or generalized anxiety disorder. Leon identified Student's conduct in the areas of hyperactivity and conduct to be at-risk. She indicated no concerns regarding anxiety, depression or somatization. She reported no problems with attention or learning problems, and rated Student at risk with hyperactivity and aggression. Lang rated Student average in the area of anxiety, depression and somatization, corroborating Gomez's responses.

22. Whitehouse concurred with Leon's and Lang's scoring in the area of anxiety, depression and somatization during her observations. She concluded that the lack of evidence of criteria suggesting the diagnoses of major depressive disorder or generalized anxiety disorder ruled out depression and fears as qualifiers for eligibility under the category of emotional disturbance.

23. Whitehouse's conclusions on the BASC-2 concurred with Hollimon's FBA. While Student demonstrated impulsive behaviors as well as immature social skills and compliance issues, in isolation they were no different than many of the behaviors of his peers. Both assessors determined that some of Student's behaviors may have required medical management but were not strictly behavioral in nature, and that they did not impact his education.

24. The CPRS-R:L and CTRS-R:L were designed to help identify hyperactive children and to assess other childhood problem behaviors. A T-Score equal or greater to 70 is considered significant and suggests a deficit area for a child. In Student's case, Student, Leon,

Gomez, and Father completed the assessments. Student rated himself as average on all behavior scales. Father rated Student above average or more in four inattentive symptoms and seven hyperactive symptoms, corroborating the diagnosis of ADHD. However, Leon and Gomez both rated Student's behaviors in a manner that would not suggest a diagnosis of ADHD. Gomez, who taught Student history in seventh and eighth grades, largely based her ratings on Student's performance in the seventh grade.

25. The BRIEF is a questionnaire for parents and teachers that enables professionals to assess executive function behaviors at home and school, which include processes responsible for guiding, directing and managing cognitive, emotional and behavioral functions, particularly during active, novel problem solving. Leon filled out the teacher form, which Whitehouse found to be a valid assessment based on the aide's full time observation of Student. Student's scores on the BRIEF in the areas of inhibition, planning and organizing, self-monitoring, and ability to shift thinking sets, monitor emotions and inhibit behaviors were above the norm, which was consistent with Student's diagnosis of ADHD.

26. Academically, in the first quarter of the 2009-2010 school year, Student generally received average grades, and excellent marks for citizenship. Student received an "A" in language arts on his most recent first quarter report card. Concerns noted by his teachers on his report card including missing assignments and low test scores.

27. His scores on the WJ-III indicated that Student was functioning in the high average range, achieving 6.3 grade level and 94 standard score in written expression, 12.8 grade level and 115 standard score in basic reading skills, 5.2 grade level and 90 standard score in reading comprehension, 5.5 grade level and 94 standard score in listening comprehension skills, 6.5 grade level and 97 standard score in oral expression skills, 13.0 grade level and 121 standard score in mathematics calculation, and 12.2 grade level and 113 standard score in mathematics reasoning.

28. Whitehouse concluded that, based upon her observations, Student's scores on the BASC-2, CPRS-R:L, CTRS-R:L, the BRIEF, Student's history of ADHD, and on Hollimon's FBA, Student's behaviors did not appear out of the norm for peers his age, and that his medication had been an effective intervention in controlling his behaviors. She also concluded that Student's difficulties with social skills, oppositional behavior and ADHD were not significant concerns that negatively impacted Student's educational performance. Whitehouse correlated Student's reported concerns with his possible prenatal exposure to drugs and opined without going into further detail that they needed to be addressed in that context. Whitehouse also concluded that treating Student's possible need for more intensive therapeutic intervention due to prenatal intrauterine consequences of drug exposure was beyond the scope of a DIS provider.

29. Student demonstrated confirmed processing disorders in the areas of attention, cognitive abilities and conceptualization. However, these processing disorders were not currently affecting his educational performance at the time of Whitehouse's assessment. Student's diagnosis of ADHD did not notably impact his educational performance, and only

slightly impacted his social skills, but no more than the norm for peers of his age. Student's deficits in adaptability, social skills and study skills were rooted in his prenatal drug exposure. However, those deficits were reinforced by Student's lack of expectation in personally taking responsibility for socially inappropriate behavior, and, by his inconsistency in maintaining consequences for his behavior at home and did not notably impact his educational performance.

30. Whitehouse recommended that Student seek outside therapy, at Parents' expense, to address their concerns regarding Student's social skills, attention deficits and oppositional behaviors in the context of his prenatal drug exposure; that Student had the need for more effective parenting skills in dealing with these issues; that District develop a behavior contract at school which set clear expectations for behavior and logical consequences for inappropriate behaviors; that District maintain updated information on Student's health/medical status and encourage school/parent communication regarding Student's ADHD; and that District encourage parent/school/therapist communication regarding outside counseling and recommendations for regular education interventions at school.

November 18, 2009 IEP Team Meeting

31. Student's IEP team met to review the FBA and psychoeducational assessments on November 18, 2009. Parents, Student's older sister, Beltran, Whitehouse, Hollimon, Cossio, Traudes, District administrator Angela Salazar, general education teacher Lonnie Moreno (Moreno), special education teacher Jennifer Batras, District's attorney, Student's attorney, and a Spanish language interpreter were among those present. Leon did not attend because of illness.

32. Parents shared with the IEP team that Student had exhibited concerning behaviors through the school year to date. They also reported that Student's aide had reported concerns to the school principal regarding Student's failure to take direction.

33. Hollimon presented her report, noting that, while Student's teachers had reported that Student's behaviors were not out of the ordinary for typical peers of Student's age, Student's behaviors were more frequent. Both Student's teachers and Parents noted that social communication was an area of concern. Hollimon recommended development and implementation of a behavior support contract and direct instruction to improve Student's social skills, as well as counseling by a qualified counselor. She responded to IEP team questions and clarified her recommendations. Based upon Hollimon's findings, she recommended that Student be assessed after District faded out his behavioral aide to determine whether Student required additional services before exiting him from special education.

34. Whitehouse presented her psychoeducational assessment report. She expressed her opinion to the IEP team that Student's medications appeared to be working, that Student's scores on assessments, particularly the CPRS-R:L and CTRS-R:L, did not reach the level of concern or consideration that required the District to provide Student with special education services for his ADHD. Student's ADHD did not contribute to creating a severe discrepancy

between his intellectual ability and his achievement in his ability to listen, think, speak, read, write, spell or perform mathematical calculations.

35. Batres had never worked directly with Student. She summarized her review of Student's academic performance based on feedback from Student's teachers, including science teacher and after-school tutor Derek Bahmanou (Bahmanou), physical education teacher Timothy J. Ribbons, language arts teacher Moreno, and choir teacher Adrian L. Estabrook.⁴ Bahmanou testified at the hearing. Bahmanou reported to Batres that Student was smart, did not test well, was easily distracted, had a bad attitude regarding academics, could be absent minded, and had a hard time developing and maintaining social relationships with other students. However, Student was smart, and was getting an "A" in Bahmanou's class at that time. Moreno reported in an email to Batres that Student had high reading comprehension although reading at a fourth to sixth grade level, asked a lot of relevant questions, was not a problem in class, and sat quietly when working in class. Moreno reported that Student's weaknesses may have included penmanship and unwillingness to do his assigned reading, which was typical of a junior high school student. He did not find Student to be academically different from the average student, although Student often waited until tutoring time to complete his assignments. Robbins and Estabrook reported by email to Batres that Student was doing well in their classes, although his writing in music theory was not always neat.

36. Prior to the November 18, 2009 IEP team meeting, behavior specialist Cossio observed Student in and out of the classroom approximately two times a month. Cossio has a master of science in counseling with emphasis on applied behavior analysis (ABA), and is a board certified behavior analyst (BCBA). She has worked for District as a behavior consultant since 2005, and had worked with Student since approximately May 2005. She observed Student seated in the front of the class, with the aide seated at the back. Student was easily redirected by his teacher on most occasions when he was off task or calling out inappropriately. The aide primarily took data, rather than directly interacting with Student in the classroom. During lunch and brunch, Cossio observed the aide occasionally redirect Student. Student had trouble turning in homework, even with the assistance of his aide. Student improved when he was required to complete his homework during brunch or lunch, because he did not want to miss play time during non-class periods. As a result of Student's responsiveness to having to make up homework during his play time, Student's inability to turn in homework was not representative of a skill deficit because he satisfactorily completed his homework with redirection.

37. Cossio reported that Student's behaviors differed based upon his various teachers' behavior management styles. Teachers with direct, hands-on interaction with Student were more successful in redirecting his behavior. During Cossio's observations, Student participated in classroom discussions, was focused on lessons and asked a lot of questions. He often called out before being called on but was easily redirected to task by his teachers. Student's behaviors were consistent with other typical students in his age range and were not of major concern.

⁴ Batres did not testify at the hearing.

38. Cossio received and reviewed a copy of Hollimon's FBA before the November 18, 2009 IEP meeting. Hollimon's observations of Student were consistent with Cossio's. She agreed with Hollimon that with clear limits, rewards, and consequences, Student could comply with directions. Cossio shared with the IEP team recommendations for strategies and accommodations that could be implemented by Student's teachers, and that Student did not require a full time 1:1 behavior aide. Cossio agreed that Student could benefit from a behavior support contract, which District customarily provided to general education students if needed.

39. The District members of the IEP team concluded, after considering all the information before it, Student was no longer eligible for and should be exited from special education. The team offered, within the general education program, to create a behavior support contract to be implemented by Student's teachers and the site administrator, which Beltran also confirmed District often provided to its students in the general education program. District also proposed that the 1:1 behavior aide would support the teachers for the following month with the implementation of the behavior support contract, fading out by December 18, 2009. District also offered to continue providing Student with one-hour tutoring and participation in Homework Club through the remainder of the 2009-2010 school year.

40. Parents did not consent to exit Student from eligibility and did not sign the November 18, 2009 IEP. District continued to provide special education pursuant to Student's prior IEP, with the exception of behavior aide services. The behavior aide services resumed in February 2010, until the end of the school year, in accordance with a settlement agreement reached between District and Parents.

May 21, 2010 IEP Team Meeting

41. On May 21, 2010, Student's IEP team convened for his annual review. Salazar, general education teacher Moreno, Batres, Cossio, Beltran, Mother, Sister, and a Spanish language translator were present.

42. Mother expressed to the IEP team her concerns regarding Student's behaviors at home and school, including that he was often depressed, that he would run away from school during the day, that he disliked and did not want to go to school, that he had expressed suicidal desires because of his dislike for school, and that she felt that the adults were not helping Student. She also reported these concerns during the school year to Student's teachers. The IEP team discussed Student's May 5, 2010 five-day suspension from school for the alleged theft of a teacher's iPod, advising Mother to arrange a meeting with Salazar to answer her questions on discipline issues.

43. Mother presented two letters/reports to Beltran before the IEP team meeting, and to the IEP team. A letter from Dr. Emil Tsai was dated May 8, 2010; the second, from Dr. Rivera, was dated May 17, 2010. Beltran received Dr. Tsai's letter before the meeting, but she did not request permission from Parents to speak with Dr. Tsai.

44. Dr. Tsai did not attend the IEP team meeting.⁵ His letter, addressed “to whom it may concern” stated that Student was his patient, and that he was taking two medications to treat his diagnosed ADHD and “Major Depressive Order”. The letter further stated Dr. Tsai’s opinion that Student had severe behavior problems, including impulsive and dangerous behavior like running into the street, and depression. Tsai recommended that Student needed an educational plan and behavior treatment to “prevent further deterioration.” However, Tsai’s letter offered no bases for his opinions and conclusions.

45. Dr. Rivera did not attend the May 2010 IEP team meeting or provide any direct input to District staff. He prepared his May 17, 2010 confidential letter report, which did not mention Student’s diagnosis of depression, to assist Student with upcoming court hearings related to the alleged iPod theft. Dr. Rivera’s May 17, 2010 status report identified that Student was in treatment for severe ADHD, that he was being treated with medication, and that Dr. Rivera taught Student decision skills in dealing with authority figures, and provided him with scenarios he was expected to encounter as an adolescent. Dr. Rivera reported that Parents participated with monitoring Student’s behavior and with discipline. Dr. Rivera reported that Student was making progress in treatment although his insight was developing slowly, and he had limited rules, expectancies and understanding of the consequences of his behavior.

46. Sister shared with the IEP team that Student often cried at home about his dislike of school. Although Sister regularly helped Student with his homework during the first semester of the 2009-2010 school year, she expressed concern to the IEP team that she would not be able to help Student in the upcoming school year because she was starting college. Because of her own schoolwork, she had been unable to spend as much time with Student on his homework during the second semester of the 2009-2010 school year. She observed that Student began to neglect his homework more frequently after she stopped helping him. Sister’s observation was corroborated by Student’s teachers, Bahmanou and Gomez, who noted a drop in Student’s completed homework assignments during the second semester of the 2009-2010 school year. Addressing Sister’s concerns at the IEP team meeting, Beltran advised her that the principal at Sierra Vista High School could provide Student with assistance to achieve academic success in the coming school year.

47. Moreno reported to the IEP team that Student received an overall advanced score on the 2010 California English Language Development Test (CELDT), that he was caught up with his homework in his language arts class, and had a “C” grade in the class at that time. Student was proficient in his general education mathematics class and below basic in his general education mathematics class, based on the results of his last California Standards Test.

48. The notes from the IEP team meeting were silent regarding Student’s present levels of performance, except as to Moreno’s report which addressed Student’s performance in language arts. The pages in Student’s IEP relating to goals and present levels of performance were void of any data and were marked “N/A” (not applicable). District offered no evidence that the IEP team had input from any of Student’s teachers, other than Moreno, regarding

⁵ Dr. Tsai did not testify at hearing.

Student's post November 2009 progress on IEP goals, his academic performance, or classroom behavior and homework habits.

49. Beltran reported to the IEP team that based upon the Whitehouse and Hollimon assessments performed in October and November 2009, the District continued to maintain that Student did not qualify for special education. She provided Mother with information regarding a behavior plan under Section 504 of the Rehabilitation Act of 1973, and advised Mother to contact the school if she wished to pursue implementation of such a plan. District could provide Student with a behavior support contract in the general education setting if Parents agreed. Mother did not sign Student's IEP consenting to exit Student from special education.

50. Student transitioned to Sierra Vista High School at the beginning of the 2010-2011 school year.

Other Evidence

51. Dr. Rivera, who testified at the hearing, has been a licensed and credentialed school psychologist for thirty-five years. He has a Ph.D. in clinical psychology, a master's degree in counseling and guidance and school psychology, and a bachelor of arts degree in English. In addition to his private practice, he worked as an instructor for the California Department of Education on appropriate assessment techniques, and as a bilingual school psychologist. He participated in approximately five thousand IEPs and conducted four to five thousand psychoeducational assessments in his career. He was familiar with the special education eligibility classification of OHI.

52. Dr. Rivera never performed a psychoeducational assessment of Student in connection with his diagnosis of ADHD; never observed Student at school; and never collaborated regarding Student with Student's teachers, Whitehouse, Hollimon, or District staff. Dr. Rivera had not assessed Student academically to determine whether his depression or ADHD had impacted his academic progress or performance at school.

53. Dr. Rivera reviewed Whitehouse's psychoeducational assessment report in preparation for the hearing and rendered his opinions regarding the results. Regarding Student's reported scores on the CPRS-R:L and CTRS-R:L, Rivera found that Student's scores in hyperactivity, as rated by Student's educational aide, indicated that he was at risk for severe social issues. Defiance was an area of particular difficulty for Student. Father's evaluation rated Student high for at risk behaviors, which was consistent with Dr. Rivera's expectation that parents typically have subjective opinions that often differ from those of a student's teachers. Home settings typically have a different set of rule expectancies. Student's scores on the BASC-2 were indicative of Student's trouble with socializing, following rules, as well as attention and learning issues impacting his ability to complete assignments. Children with ADHD typically do not want to do assigned work and, while able to control their motor skills, are often distracted and unable to overcome distraction without assistance. Student's scores on the BASC-2 in depression were a major concern to Dr. Rivera, indicating, in his opinion, that

Student's depression could impact him at school by manifestations of anger, irritability, and acting out.

54. Dr. Rivera opined that Student should continue to receive services from the District to help him academically and socially; that the 1:1 behavior aide should be faded out; that a behavior support plan would be valuable for Student; and, consistent with Hollimon, that District should consider Student's behavior issues as part of an IEP team meeting to exit Student from special education.

55. Student's 2009-2010 report card was admitted as evidence and discussed by Bahmanou and Gomez at the hearing. His grades at the end of the first semester of the school year were "A" in Chorus, "B" in Language Arts, "C" in General Science and Physical Education, and "D" in Algebra and History. Teacher comments included "satisfactory citizenship," "good participation/effort," "poor effort/participation," "low test scores," and "excessive talking." At the end of the fourth quarter, second semester, which ended before the May 2010 IEP team meeting, Student's grades were "C" in Chorus Mixed, History/Social Studies, Language Arts and Physical Education, and "D" in Algebra and General Science. Student's grades in Science and Algebra were impacted because he did not turn in all of his homework assignments and had low test scores; his grade in chorus was impacted because he missed rehearsal/performances.

LEGAL CONCLUSIONS

1. District contends that it properly determined that Student was no longer eligible for special education as of the November 18, 2009 IEP team meeting. District further contends that the decision to terminate Student's eligibility from special education services at the May 21, 2010 IEP team meeting was appropriate. In particular, District contends that this decision was proper because: the psychoeducational report and recommendations of Whitehouse prepared for the November 2009 IEP team meeting demonstrated no eligibility; that Student's behaviors related to his medical diagnosis of ADHD did not impact his access to education; that Student failed to establish a nexus between his ADHD and his decline in grades during the second half of the 2009-2010 school year; that Student's Parents never provided District with specific and important information about Student's ADHD diagnosis, severity and outside treatment; and that Student's behaviors and social concerns could be accommodated by District through a behavior support plan and other accommodations without special education services or a 1:1 behavior aide. District seeks an order permitting it to exit Student from special education.

2. Student contends that District denied him a FAPE in November 2009, and in May 2010, by finding him ineligible for special education as OHI. Specifically, Student contends that he should have been found eligible as OHI for special education at the November 2009 IEP based upon his diagnosis of ADHD and associated behaviors. Similarly, Student contends that he should have been found eligible as OHI at the May 2010 IEP because: Mother reported her concerns about Student's behavior and depression during the school year to

Student's teachers, and to the May IEP team; Mother provided Student's May 2010 IEP team with letters from Dr. Rivera and Dr. Tsai that established that Student had serious issues associated with ADHD; District disregarded Student's historic serious behavior and emotional issues and related concerns, including Student's strong dislike of school; and Student's homework habits and grades worsened in the second semester of the 2009-2010 school year. Student seeks as remedies a finding of eligibility under OHI, resource specialist program (RSP) services, DIS counseling, and a positive behavior support plan.

Applicable Law

3. District has the burden of proof on Issue One and Student has the burden of proof on Issue Two. (See *Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

4. A child with a disability has the right to a FAPE under the IDEA. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, §§ 56000, 56026.) FAPE means special education and related services that are available to the student at no cost to the parent or guardian, that meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9); Ed. Code, § 56031; Cal. Code Regs., tit. 5, § 3001, subd. (o).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29).) The term "related services" (in California, "designated instruction and services"), includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from education. (20 U.S.C. § 1401(26); Ed. Code, § 56363, subd. (a).)

5. The term "child with a disability" means a child (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services. (20 U.S.C. § 1401(3)(A)). A child may have a qualifying disability, yet not be found eligible for special education, because the student's needs can be met with appropriate modification of the general education classroom. (*Hood v. Encinitas Union School District* (9th Cir. 2007) 486 F.3d 1099, 1107-1108, 1110.) In *Hood*, the due process hearing officer and the reviewing court looked to the child's above-average success in the classroom as shown by the child's grades and the testimony of teachers as evidence that the child's needs could be met in a general education classroom without specialized education and related services. Additionally, the student had not persuasively shown that the student's discrepancies between ability and achievement were beyond correction in the normal classroom. The Ninth Circuit Court of Appeals found that to attempt to accommodate the student in the general classroom was consistent with the concept of mainstreaming, an objective the school district was legally bound to pursue under 20 U.S.C. § 1412(a)(5). (*Ibid.*)

6. In *Board of Education of the Hendrick Hudson Central School District, et al. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to

specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204, 207; *Park v. Anaheim Union High School District* (9th Cir. 2006) 464 F.3d 1025, 1031.)

7. The Ninth Circuit Court of Appeals has endorsed the "snapshot" rule, explaining that the actions of the District cannot "be judged exclusively in hindsight" but instead, "an IEP must take into account what was, and what was not, objectively reasonable . . . at the time the IEP was drafted." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. Of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

8. A student “whose educational performance is adversely affected by a suspected or diagnosed attention deficit disorder or attention deficit hyperactivity disorder” and who meets the eligibility criteria for specific learning disability or other health impairment under Education Code section 56337 and California Code of Regulations, tit. 5, section 3030, subdivisions (f) and (j), is entitled to special education and related services. (Ed. Code, § 56339, subd. (a).) “Other health impairment” is defined, in relevant part, as “having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that . . . is due to chronic or acute health problems such as . . . attention deficit disorder or attention deficit hyperactivity disorder . . . and [a]dversely affects a child’s educational performance.” (34 C.F.R. § 300.8(c)(9) (2006)⁶; see also Cal. Code Regs., tit. 5, § 3030, subd. (f).)

9. A child may be eligible for special education and related services under the category of emotional disturbance if, because of a serious emotional disturbance, a pupil exhibits one or more of the following characteristics over a long period of time and to a marked degree, which adversely affect educational performance: (1) An inability to learn which cannot be explained by intellectual, sensory, or health factors; (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (3) Inappropriate types of behavior or feelings under normal circumstances exhibited in several situations; (4) A general pervasive mood of unhappiness or depression; (5) A tendency to develop physical symptoms or fears associated with personal or school problems. (5 C.C.R. § 3030, subd. (i).)

10. Before a child may be found ineligible for special education, the local educational agency must conduct an assessment of the child, in all suspected areas of disability. The IEP team or other qualified professionals must review existing data regarding the child and determine, with input from the parents, what additional data are needed to determine questions regarding whether a child is a child with a disability, the present levels of academic performance and developmental needs of the child, whether the child needs or continues to need

6 All future references to the Code of Federal Regulations are to the 2006 edition.

special education and related services, or whether modifications to the IEP are required to enable the child to meet annual goals. (20 U.S.C. §§ 1414(c)(1)(A) & (B); Ed. Code, § 56381, subds. (b) & (c).) Parental consent must be obtained for any reevaluation. (20 U.S.C. §§ 1414(c)(3); Ed. Code, § 56381, subd. (f).) The assessment must be conducted in a way that: 1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; 2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and 3) uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The assessments used must be: 1) selected and administered so as not to be discriminatory on a racial or cultural basis; 2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; 3) used for purposes for which the assessments are valid and reliable; 4) administered by trained and knowledgeable personnel; and 5) administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, § 56381, subd. (h).)

11. Upon completion of the assessment, the determination of whether the child is a child with a disability must be made by a team of qualified professionals and the parent of the child. (20 U.S.C. § 1414(b)(4)(A).) A local education agency must give parents prior written notice before the public proposes to initiate or change the identification, assessment or educational placement of a child or the provision of FAPE to the child. (20 U.S.C. § 1415(b)(3) & (4) and (c)(1); Ed. Code, § 56500.4(a) & (b).) A local education agency may request a due process hearing when a disagreement exists about a proposal to change the special education eligibility of a child. (See Ed. Code, § 56501, subds. (a)(1) & (a)(2).)

Analysis of Issues 1(a) and 2(a) - Eligibility as of November 18, 2009

12. District contends that Student's November 2009 IEP team correctly found Student ineligible as OHI for special education. Student contends that he was eligible for special education as OHI at all times and that, as a result of District's decision to exit him from special education, he was denied a FAPE. As discussed below, District met its burden of showing that Student was properly exited, whereas Student failed to meet his burden of showing that District should have found him still eligible.

13. In April 2009, District initially found Student eligible for special education as OHI under the classification of ADHD based primarily upon a nurse's review of a doctor's prescription documenting diagnosis of ADHD.

14. At Student's request, in October and early November 2009, District paid for an FBA performed by Hollimon, and arranged for Whitehouse to perform a psychoeducational assessment. Other than his reported behavioral issues associated with ADHD and his suspected social/emotional behaviors, Parents reported no other areas of concern or suspected disability. Both Hollimon and Whitehouse assessed Student in all areas of suspected disability. Student is

not challenging the efficacy of Hollimon's or Whitehouse's assessments, which were appropriately conducted by qualified professionals.

15. Student's IEP team convened on November 18, 2009, to discuss and review the two assessments and to reevaluate Student's eligibility under OHI. Student's November 2009 IEP team, which included a general and special education teacher, Hollimon and Whitehouse, resource specialist Cossio, and Parents, received input from Parents and from Student's attorney. The IEP team also reviewed existing data regarding Student provided by various IEP team members, it considered Student's present levels of academic performance and developmental needs as reported by Batres and Moreno, and considered Cossio's report on Student's behaviors in class.

16. The information before the November 2009 IEP team established that, although Student was at-risk or clinically significant in some areas of testing, his behaviors were generally typical of other children his age, although slightly heightened because of his ADHD; that his academic performance was satisfactory or better in most classes; that his behaviors were not affecting his access to his education; that the 1:1 behavior aide was only minimally interacting with Student in the classroom and occasionally during breaks; and that Student's general education teachers were actively redirecting Student when needed. Although Hollimon and Whitehouse differed in their opinions as to whether Student should be immediately exited from special education, they both credibly concluded that District staff should nevertheless consider providing Student with support and accommodations, including a behavior support plan, and a fade-out plan for the behavior aide. Cossio and Beltran credibly confirmed that District could and often did provide a behavior support contract for general education children with similar needs.

17. On the other hand, Student offered no persuasive evidence that established that, at the time of the November 2009 IEP team meeting, Student required special education services or that the services offered by District could not be successfully provided to Student in a general education setting. Cossio credibly concurred with Whitehouse and Hollimon that the 1:1 behavior aide should be faded out to enable Student to become more independent. Dr. Rivera's May of 2010 report was never presented to the November 2009 IEP team, nor was any current information from Dr. Rivera, including his opinion on fading out the 1:1 behavior aide, provided to any of the District's assessors prior to the November 2009 IEP team meeting. More importantly, Dr. Rivera's opinion that Student was not yet ready to exit from special education was not credible because, despite having conducted approximately 4000-5000 psychoeducational assessments in his career, he did not personally assess Student's behaviors in connection with his academic performance, and had no personal knowledge of Student's in-class or on-campus performance or social behaviors. His testimony regarding the impact of Student's ADHD on his 2009-2010 academic performance was not persuasive, and his opinions were unknown at the time of the November 2009 IEP team meeting. Therefore, Whitehouse's opinions and conclusions carried more weight than those of Dr. Rivera regarding whether, in November 2009, Student required special education services as opposed to supports in general education.

18. Although Student contends that he should be found eligible for special education as OHI/ADHD based upon the holding in *W.H. ex rel. B.H. v Clovis Unified School District* (E.D Cal. 2009) 2009 WL 1605356, the facts in that case are distinguishable. In *W.H.*, the student had a diagnosis of ADHD and the school district found him ineligible for special services, relying on *Hood, supra*. The District Court concluded, however, that the evidence supported a finding that the only way the student could benefit from his education was to receive special education services as OHI/ADHD because behavior supports as part of a Section 504 plan implemented in a general education setting had historically been of no value to that student. In this case, Student's Parents rejected District's offer in November 2009, to establish a behavior contract and to provide supports as part of a Section 504 behavior plan, and therefore the plan was never implemented. In addition, a 1:1 behavior aide in the special education setting had offered little value to Student. Therefore, Student failed to offer any evidence that, at the time of the November 2009 IEP team meeting, accommodations including a 504 behavior plan would *not* succeed in a general education setting.

19. Based upon all of the evidence before the IEP team at the November 2009 meeting, and in the absence of any compelling or credibly contradictory evidence from Student, District determined that Student was making some academic progress during the first semester of the school year, he was accessing his education, and his social and behavioral issues were not substantially interfering with his progress. Student no longer needed special education and related services and he could receive the recommended supports in general education, which the District offered.

20. District's determination in November 2009, that Student was not eligible for special education services was appropriate. District did not, however, formally exit Student from special education after Parents refused consent to the Addendum IEP. Instead, in accordance with a settlement agreement between Student and District⁷, District continued to provide a full-time 1:1 behavior aide through the remainder of the school year, and District and Student resolved other unidentified disputes outside of the parameters of this consolidated due process matter. District did not deny Student a FAPE at his November 2009 IEP. (Factual Findings 1- 40, 50-54; Legal Conclusions 3-20.)

Analysis of Issue 1(b) and 2(b) – Eligibility in May 2010

21. District contends that Student's May 2010 IEP team correctly found that Student remained ineligible for special education based upon Student's progress in the 2009-2010 school year, on the October and November 2009 assessments, and upon the November 2009 IEP team's findings. Student contends that he was eligible for special education at all times under the OHI category, and that, as a result of District's decision to exit him from special education, he was denied a FAPE. As discussed below, District met its burden of showing that Student was also properly exited from special education in May of 2010. In contrast, Student

⁷ The settlement agreement reached after the November 2009 IEP was not offered or admitted into evidence and neither party offered evidence relating to its terms other than as referenced in this Decision.

failed to meet his burden of showing that as of May of 2010, he should have been found eligible under the OHI category.

22. As discussed above, District appropriately found in November 2009, that Student was no longer eligible as OHI for special education. The District held another IEP team meeting in May 2010, to discuss Student's eligibility. The meeting was attended by the appropriate District staff, as well as Mother and Sister. The District relied on the Hollimon and Whitehouse assessments from October and November 2009, which were credible and contemporary. Although District did not go into a detailed analysis of Student's progress after the November 2009 IEP team meeting, Moreno reported on Student's academic progress in his language arts class. Student offered no evidence that he suffered any substantive harm from District's failure to evaluate in detail his academic progress in May 2010. District considered information offered by Mother and Sister before affirming its earlier decision to exit Student from eligibility under OHI.

23. Specifically, Mother offered the IEP team letters from Dr. Tsai and Dr. Rivera, which generally confirmed that Student was under medical treatment for ADHD and, according to Dr. Tsai, "Major Depressive Disorder." However, Student offered nothing to the IEP team that indicated that circumstances had changed from the time of the November 2009 assessments. He offered the May 2010 IEP team no evidence that his ADHD had adversely affected his academic performance. On the contrary, Bahmanou, Gomez, and Cossio observed that Student's behaviors throughout the school year were generally typical of others his age, and that, when appropriately redirected from his occasional inattentiveness and inappropriate calling out, he performed well in his classes. Student's teachers reported that Student was smart, that he was accessing his education, and that his dislike of school, which was typical of students his age, was a factor in his grades. Student's drop in grades in the second semester of the 2009-2010 school year were caused by Student's failure to turn in some homework assignments and missing some choral practices. Hollimon and Whitehouse's assessments from October and November 2009, which were still valid, found that Student's academic achievement had not been significantly impacted by his ADHD.

24. Student failed to offer any persuasive evidence that his behavior issues associated with ADHD could not be accommodated in the general education setting. District, on the other hand, persuasively established that it could provide Student with a behavior support plan and other modifications under a Section 504 plan in the general education setting.

25. Regarding Student's emotional issues, Sister and Mother reported to the IEP team that Student was depressed because he disliked school. However, the May 2010 IEP team had no information before it that supported emotional disturbance as a suspected eligibility category. Although Dr. Tsai's letter noted that Student suffered from "Major Depressive Disorder," he offered no additional details in his letter supporting his summary conclusion. Dr. Rivera's letter, which was written for court purposes and not for Student's IEP team, was similarly lacking in detail. On the other hand, the IEP team reasonably relied upon Whitehouse's November 2009 assessment, where she concluded that the lack of evidence of criteria in Student's assessment results suggesting the diagnoses of major depressive disorder or

generalized anxiety disorder ruled out depression and fears as qualifiers for eligibility under the category of Emotional Disturbance.

26. Based upon all of the evidence before the IEP team at the May 2010 IEP team meeting, and in the absence of any compelling or credibly contradictory evidence from Student, District appropriately determined that Student was making some academic progress during the 2009-2010 school year, he was accessing his education, and his social and behavioral issues were not substantially interfering with his academic progress. Further, Student no longer needed the support of a 1:1 behavior aide, and Student could receive the recommended supports of a behavior support plan, which Student sought as a remedy in this matter, in general education. District appropriately determined that Student was not eligible for special education as OHI in May 2010. (Factual Findings 1-48, 50-55; Legal Conclusions 3- 26.)

ORDER

District may exit Student from eligibility for special education.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. District was the prevailing party on both issues.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety days of receipt.

Dated: November 29, 2010

/s/

ADRIENNE L. KRIKORIAN

Administrative Law Judge

Office of Administrative Hearings